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UNITED STATES DISTRICT COURT  
 DISTRICT OF NEVADA

ORACLE USA, INC.; a Colorado corporation;  
 ORACLE AMERICA, INC.; a Delaware  
 corporation; and ORACLE INTERNATIONAL  
 CORPORATION, a California corporation,

Plaintiffs,

v.

RIMINI STREET, INC., a Nevada corporation;  
 and SETH RAVIN, an individual,

Defendants.

**Case No. 2:10-cv-0106-LRH-VCF**

**ORACLE'S RESPONSE TO  
 RIMINI'S RESPONSE TO ORDER  
 TO SHOW CAUSE**

**PUBLIC REDACTED VERSION**

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## I. INTRODUCTION

The Court’s March 31, 2021, Order to Show Cause directed Rimini “to show cause why it should not be held in contempt for violating the permanent injunction.” ECF No. 1459 at 35. Rimini’s response (“Response”) fails to do so. Instead, Rimini blames others for its violations of the Injunction, claims that Rimini demonstrated “substantial compliance” simply because of the volume of Rimini’s support practices, and excuses infringement of JD Edwards software through feigned confusion about the term “source code.” Rimini largely lacks testimony or record evidence for these assertions, ignoring the directive to show cause and vaguely alluding to what unspecified evidence might show at the hearing. The evidence Rimini does supply with its Response confirms that Rimini has violated the Injunction numerous times by reproducing and using PeopleSoft software and documentation on its computer systems, cross-using PeopleSoft software, and copying JD Edwards source code. Rimini is engaging in the same conduct this Court has repeatedly held unlawful.

Rimini’s claims of substantial compliance, unaccompanied by evidence, are simply the most recent reprise of Rimini’s “Process 2.0” story. Rimini claims it revised its practices into “Process 2.0” in 2014, which is a year before the jury rendered a verdict in Oracle’s favor, and before any injunction issued. Rimini also contends that its Injunction violations were based on a reasonable and good faith interpretation of the Injunction. But all that Rimini offers are these tortured readings of the Injunction’s many prohibitions:

- Rimini blames its customers for the PeopleSoft files on its systems that this Court found to violate the Injunction, despite the evidence showing that Rimini used or reproduced those files.
- Rimini mischaracterizes its cross-use Injunction violation regarding Matheson Trucking as merely the “reus[e] [of] knowledge and work product.” Response at 13.
- Rimini wrongly asserts the only cross-use adjudicated by this Court and the jury was “using *generic* environments to create updates containing Oracle code that were then sent to multiple clients.” *Id.* at 14 (emphasis in original).
- Rimini argues that its cross-use violations should be excused because even though Rimini *developed* particular updates through cross-use, it performed some modicum of *testing* in the beneficiary recipients’ PeopleSoft environments.

- 1       • Rimini argues that the Injunction’s prohibition on copying “J.D. Edwards source code”  
2       distinguishes between what Rimini calls “open code” and “closed code,” even though  
3       [REDACTED] ECF No. 1405-1-s at 173:8–174:11.

4       That Rimini so willingly distorts the meaning of the Injunction—after the Ninth Circuit  
5       held that it “clearly sets out what conduct is restricted” (ECF No. 1236 at 5)—shows precisely  
6       why Rimini should be held in contempt.

7       Rimini also argues that it should not be held in contempt because there are only a “small  
8       number” of Injunction violations to be confirmed at the September 20, 2021, hearing. In fact, the  
9       violations that Rimini admitted, as well as those that Oracle will be prepared to prove at the  
10      hearing, are numerous and exemplary of business practices “built entirely on its infringement of  
11      Oracle’s copyrighted software.” ECF No. 1164 at 6. Rimini’s violations of the Injunction are  
12      substantive, central to what the Injunction forbids, and especially with respect to copying JD  
13      Edwards source code, systemic throughout its support processes.

14      Nor can Rimini claim that the violations of the Injunction that Oracle did uncover are  
15      unrepresentative of its overall support practices because the discovery in this case was  
16      substantially circumscribed at Rimini’s urging. Rimini resisted the production of documents,  
17      depositions, and third-party subpoenas at every turn in these contempt proceedings, and  
18      ultimately persuaded the Court to limit discovery in these proceedings. For example, while  
19      Rimini touts its purported efforts to inform its employee about the Injunction, Rimini fails to  
20      mention that it refused to tell Oracle what efforts, if any, it made to inform its employees or to  
21      attempt to comply with the Injunction. Oracle only learned this most basic Injunction-compliance  
22      information after a successful motion to compel.

23      Rimini also makes no showing as to why it could not have complied with the Injunction,  
24      as required when a party has been found to have committed Injunction violations. Rimini could  
25      have complied with the Injunction, but instead chose not to, adopting a cavalier attitude toward  
26      the Injunction as evidenced by Rimini’s public statements and refusal to provide information  
27      about its Injunction compliance. This Court should find Rimini in contempt and either impound  
28      Rimini’s computer systems or require that they be placed in escrow to allow monitoring by

Oracle for additional Injunction violations.

## II. FACTUAL BACKGROUND

### A. Rimini Violated the Injunction

In its Order to Show Cause, the Court held that Rimini violated the Injunction in at least two ways. First, Rimini has PeopleSoft software and user documentation on its systems. ECF No. 1459 at 22–23. Second, Rimini cross-used update HCM200049 by delivering it to customer Matheson Trucking without developing or testing the update in that customer’s environments. *Id.* at 26–27. The Court also ordered an evidentiary hearing on eight other issues. *See generally, id.*

### B. The Injunction, Fully in Force, Is Based on Years of Discovery, Careful Factual Findings, and Guidance from the Ninth Circuit

Oracle brought this lawsuit in January 2010, prevailed on partial summary judgment in 2014, and at trial in 2015, establishing that Rimini infringed all 93 of Oracle’s copyrights-in-suit on two primary grounds: cross-use and violation of the facilities restriction. ECF No. 474; ECF No. 896. This Court entered an injunction in 2016, and after an initial appeal and a limited remand, entered the Injunction in 2018. ECF No. 1164; ECF No. 1166; ECF No. 1111.

These rulings, and their underlying briefings, were based on numerous discovery responses, emails, and deposition and trial testimony. *See, e.g.,* ECF No. 474 at 13, 26, 27; ECF No. 242; ECF No. 261; ECF No. 476 at 13; ECF No. 411; ECF No. 438; ECF No. 1049 at 5–6; ECF No. 1164 at 13. The Ninth Circuit substantially affirmed the Injunction on appeal, reiterating that it “clearly sets out what conduct is restricted.” ECF No. 1236 at 5. But Rimini has continued to operate as if the Injunction were a contract that it can interpret as it sees fit and that it can breach when efficient for Rimini to do so.

#### 1. At every step, Rimini has represented to its employees, customers, and the public that it is business as usual

After the Injunction took effect in 2018, Rimini called the Injunction vague and overbroad, and [REDACTED]

[REDACTED] Declaration of Jacob Minne (“Minne Decl.”) ¶ 2, Ex. 4 (Depo Ex. 1832); ECF No. 1369-7-s. After the Ninth



1 Circuit affirmed the Injunction in relevant part, Rimini told the public only about purported errors  
 2 that the Ninth Circuit had corrected, and claimed that it “had voluntarily stopped using the legacy  
 3 processes that were found to be infringing before the 2015 trial and before the District Court  
 4 issued an injunction barring the use of those legacy processes in 2018.” Minne Decl. ¶ 3, Ex. 5.

5 The day this Court ruled that Rimini violated the Injunction, Rimini issued a press release  
 6 entitled “Court Rules in Rimini Street’s Favor on Key Matters, Denies Oracle’s Motions and  
 7 Cites ‘Common Sense’ and ‘Absurd Result’ in Denying Oracle’s Claim.” Minne Decl. ¶ 4, Ex. 6.  
 8 Rimini did not mention it was facing contempt for violating a permanent injunction issued by a  
 9 federal court. Company CEO Seth Ravin repeated these claims during a May 10, 2021, earnings  
 10 call and told the public that the Court had “affirmed that there has been no finding of  
 11 infringement by the court of the company’s enterprise software support process 2.0 or  
 12 Automation Framework, AFW tools ....” Minne Decl. ¶ 5, Ex. 7. This is flatly contradicted by  
 13 the Court’s Order to Show Cause: “In relevant part, the Court held that ***Rimini had infringed***  
 14 ***four of Oracle’s copyrights ... while following its new Process 2.0 support services*** for its  
 15 clients Campbell Soup and City of Eugene.” ECF No. 1459 at 6 (emphasis added).<sup>1</sup>

16 The Court held that Rimini’s conduct under its purported “2.0 process” can both infringe  
 17 Oracle’s copyrights and violate the Injunction. ECF No. 1459 at 17–18; *Rimini II*, ECF No. 1253  
 18 at 38–65. And Rimini has not significantly changed those processes as part of its post-Injunction  
 19 compliance efforts. Rimini refers only to two changes it allegedly made: 1) keeping PeopleSoft  
 20 environments off its systems, and 2) [REDACTED] Response at 3  
 21 (citing ECF No. 1385 at 5 and ECF No. 1385-2-s ¶ 43 & n.2). These changes are insufficient. As  
 22 the Court’s Order to Show Cause confirms, Rimini also violated the Injunction by doing the same  
 23 things it has been doing since the inception of this litigation: having PeopleSoft copyrighted  
 24 materials on its systems and supporting customers through cross-use.

25  
 26 <sup>1</sup> Mr. Ravin even implied this case is complete and that the evidentiary hearing was set solely to  
 27 address Rimini’s motion for reconsideration. Minne Decl. Ex. 7 (“The parties are also engaged in  
 28 a dispute over a permanent injunction that has been in place since 2018 ... We have filed a  
 motion with the court to correct the errors. The court has scheduled an evidentiary hearing in  
 September 2021.”).

1                               **2.     Rather than demonstrate its compliance with the Injunction, Rimini**  
 2                               **stonewalled Oracle for months**

3               Shortly after this Court and the Ninth Circuit rejected Rimini’s request to stay the  
 4 Injunction pending appeal, ECF No. 1177 at 3; ECF No. 1180 at 1, Oracle contacted Rimini [REDACTED]  
 5 [REDACTED] ECF No. 1201-8-s at 2–3.  
 6 Oracle asked Rimini [REDACTED]  
 7 [REDACTED] *Id.* at 3. Oracle also sought to  
 8 discuss a process by which Rimini would preserve certain materials and copy them to escrow at  
 9 Oracle’s expense, and to modify the protective order to use *Rimini II* discovery in *Rimini I*. *Id.*  
 10 [REDACTED]  
 11 [REDACTED] ECF Nos. 1201-9-s, 1201-11-s. [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED] *Id.*

14               Rimini then delayed discovery proceedings for four months with procedural maneuvering.  
 15 When Oracle sought to modify the Protective Order in *Rimini II*, so that the vast discovery from  
 16 that case could be used in this Injunction-compliance proceeding, Rimini argued to Magistrate  
 17 Judge Hoffman that it would be improper to use that material in this case. *Rimini II*, ECF No.  
 18 1228; *Rimini II*, ECF No. 1234; *contra Rimini II*, ECF No. 1237 (granting Oracle’s motion).  
 19 When Oracle sought Injunction-compliance discovery in this case, Rimini argued to Magistrate  
 20 Judge Ferenbach that such discovery was unnecessary because Oracle could use all of the  
 21 discovery material from *Rimini II*. ECF No. 1218 at 16:7–10, 20:2–6, 25:3–16, 30:1–31:8.  
 22 Unsurprisingly, Rimini did not inform Magistrate Judge Ferenbach that it had taken the exact  
 23 opposite position before Magistrate Judge Hoffman (who had not yet ruled on the issue).

24                               **C.     Even Without Full Discovery into Rimini’s Support Processes, Oracle**  
 25                               **Identified Injunction Violations Warranting Contempt**

26               Oracle’s Motion for Order to Show Cause contains sufficient evidence of violations of the  
 27 Injunction to support a show-cause order and a contempt finding. Rimini claims that the  
 28 Injunction violations identified in Oracle’s Motion are limited to “isolated” instances. Response

1 at 7–8. But Oracle identified numerous Injunction violations within the circumscribed support  
2 processes that it was permitted to review.

3 Although Magistrate Judge Ferenbach granted Oracle’s Motion for Limited Discovery, he  
4 further curtailed Oracle’s already-limited request. ECF No. 1201; ECF No. 1218 at 42:12–43:2,  
5 53:2–11, 56:8–15. He agreed with Rimini’s argument that only “limited” discovery was  
6 necessary to determine whether Rimini was in contempt. ECF No. 1218 at 32:18–25 (“You get  
7 enough evidence to prove your case, you don’t have to keep going on and on and on getting  
8 evidence in if you want Judge Hicks to find they’re in contempt.”); ECF No. 1256 at 25:11–15,  
9 28:1–11 (Rimini: “we have agreed, we have agreed to some custodial discovery”).

10 Yet Rimini resisted the production of any custodial documents, claiming all custodial  
11 documents were irrelevant, *id.* at 20:12–15, 25:16–22, forcing Oracle to bring a motion to compel  
12 production of documents from nineteen custodians. As Oracle explained:

13 [c]ustodial documents have been key throughout this litigation in establishing Rimini’s  
14 actual practices—as opposed to what Rimini claims to be doing. Over and over, custodial  
15 documents have shown that Rimini’s claims about its practices are false. Three days ago,  
in materially rejecting Rimini’s appeal of the Injunction, *the Ninth Circuit found that*  
*“Rimini’s internal emails” were powerful evidence supporting the Injunction’s issuance.*

16 ECF No. 1239 at 1–2 (emphasis added); *see also id.* at 10–12. Magistrate Judge Ferenbach  
17 granted the motion in part, but limited Oracle to ten custodians, less than 1% of Rimini’s “1,400  
18 employees,” and Oracle was not permitted to depose any individual witness beyond a single Rule  
19 30(b)(6) deposition. ECF No. 1256 at 40:9–41:9; ECF No. 1255; ECF No. 1232. Rimini  
20 designated one witness to testify on all 30(b)(6) topics, and thus, Oracle received only seven  
21 hours of deposition testimony. Oracle also was limited to five third-party subpoenas to Rimini  
22 customers—*i.e.*, less than 2% of Rimini’s post-Injunction PeopleSoft and JD Edwards customers.  
23 ECF No. 1232.<sup>2</sup> As shown below, in these contempt proceedings Oracle received only a small  
24 fraction of the discovery that it received in connection with the *Rimini I* trial or the *Rimini II* case:  
25  
26

27 \_\_\_\_\_  
28 <sup>2</sup> Oracle was also permitted only 30 pages of briefing and 250 pages of exhibits for its Motion.  
ECF No. 1349 at 2.

	<i>Rimini I</i>	<i>Rimini II</i>	<i>Rimini I</i> Post-Injunction
Custodians	54	50	10
RFPs	Unlimited Oracle served 98 Rimini served 57	Unlimited Oracle served 272 Rimini served 346	15
RFAs	250	175	10
Interrogatories	40	35	5
Depositions (party)	25	25	1
Depositions (non-party)	20	35	5 subpoenas for document production or testimony
Third-Party Subpoenas	Unlimited	Unlimited	
Number of Third-Party Productions Received	317	607	5

The evidence that came out of this limited discovery shows that Rimini has violated the Injunction. Yet Oracle still does not know the full extent of Rimini's contempt because Oracle has not received full discovery into Rimini's support processes (which would require discovery similar to what Oracle received in *Rimini I* and *Rimini II*). There is no basis for Rimini's assertion that the unexamined portions of its support processes comply with the Injunction; rather, the presumption should run the other way.<sup>3</sup>

### III. RIMINI SHOULD BE HELD IN CONTEMPT FOR ITS ADJUDICATED VIOLATIONS OF THE INJUNCTION

"The standard for finding a party in civil contempt is well settled" and Rimini's Response ignores it: "The moving party has the burden of showing by clear and convincing evidence that the contemnors violated a specific and definite order of the court. The burden then shifts to the contemnors to demonstrate why they were unable to comply." *F.T.C. v. Affordable Media, LLC*, 179 F.3d 1228, 1239 (9th Cir. 1999) (citations and quotations omitted); *S.E.C. v. Fujinaga*, No. 2:13-cv-1658, 2020 WL 3050713, at \*3 (D. Nev. June 8, 2020). At least as to the Injunction

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<sup>3</sup> On May 11, 2021, Rimini produced over 29 gigabytes of documents, one of the largest productions of documents that Rimini made during post-Injunction discovery in this case. This production "includes Salesforce data for all cases for the J.D. Edwards and PeopleSoft product lines that were open at any time between November 5, 2018 ... and September 10, 2019." ECF No. 1471 at 2. Other than claiming "error," Rimini offers no explanation as to why this massive production of documents arrives now, months after the close of expert discovery and the filing of Oracle's OSC Motion. *Id.* Oracle reserves all rights with respect to this untimely production.

violations that the Court found in its Order to Show Cause regarding (1) PeopleSoft files and documentation on Rimini's systems and (2) Rimini's cross-use in delivering HCM200049 to Matheson Trucking, Rimini has the burden to demonstrate why it should not be held in contempt.

Rimini's Response fails to show cause as to why it should not be held in contempt for these violations of the Injunction. Rimini offers boilerplate "evidence will show" recitations, many of which are unsupported by evidence or citations to the discovery record. After calling its violations "regrettable," Rimini pivots to the same "Process 2.0" story from its prior filings. This Court should not permit Rimini to keep reciting the same, false narratives to its investors, the Court, and the public. This Court should hold Rimini in contempt.

**A. Rimini Should Be Held in Contempt for the PeopleSoft Software and Documentation on Its Systems**

In February 2014, this Court ruled that Rimini infringed Oracle's copyrights by maintaining local copies of PeopleSoft software on its computer systems. ECF No. 474 at 8–20. Seven years later in its Order to Show Cause, the Court ruled that "Rimini is violating the permanent injunction" by maintaining "the 'psptaxdt.dms' source code file and emails containing PeopleSoft copyrighted documentation and PeopleSoft Payroll update documents" on its systems. ECF No. 1459 at 22–23. Rimini is engaging in the same unlawful conduct as before.

The Court further directed in its Order to Show Cause that "at the hereafter hearing, the parties will not be permitted to re-argue the at-issue conduct." *Id.* at 23. Yet that is exactly what Rimini attempts to do in its Response. The Court should disregard this re-arguing of the predicate facts, which further underscores the need for a contempt sanction.

***Psptaxdt.dms***. Rimini blames customer R.R. Donnelley for sending the "psptaxdt.dms" file to Rimini on March 27, 2019, "as part of a support request." Response at 8 (citing ECF No. 1386-9-s at 2). But the Response ignores that [REDACTED] R.R.

Donnelley [REDACTED] After this customer attached the file to an email [REDACTED]

[REDACTED] Rimini wrote to R.R. Donnelley on March 28, stating: [REDACTED]

[REDACTED]

[REDACTED] Declaration of Barbara Frederiksen-Cross ("BFC Decl.") ¶¶ 2–

11, Ex. 1. Rimini's [REDACTED] of the psptaxdt.dms file (at minimum by making RAM copies) violates Paragraph 5 of the Injunction.

***Rimini's Internal Forwarding of PeopleSoft Documentation.*** Rimini blames [REDACTED] for "plac[ing] the [PeopleSoft] files on [Rimini's] own system." Response at 9. This is incorrect. [REDACTED] Rimini Ex. A

[REDACTED]. Furthermore, Rimini internally forwarded eight PeopleSoft documents to two other Rimini employees, reproducing each document at least three times (*i.e.*, in the two recipients' inboxes and in the sender's sent folder) and further admits to uploading these documents to an environment associated with [REDACTED]. *See id.*; Response at 9. These multiple reproductions of PeopleSoft documentation are further violations of Paragraph 5.

***Rimini's Movement of PeopleSoft Documentation to ShareFile.*** Oracle's expert, Ms. Frederiksen-Cross, identified two additional instances of PeopleSoft documentation on Rimini's systems in her declaration supporting Oracle's OSC Motion. ECF No. 1368-1-s at ¶ 82; ECF No. 1335-1-s at ¶ 201 & nn. 209–10 (identifying Bates numbers). Rimini again seeks to shift the blame to a customer, claiming that [REDACTED] sent these PeopleSoft documents to Rimini. But the PeopleSoft documents that Ms. Frederiksen-Cross identified were not email attachments; they came from Rimini's [REDACTED]. Minne Decl. ¶¶ 6–7, Ex. 8 (RSI007954243), Ex. 9 (RSI007954231). Thus, even if Rimini's assertion is true, Rimini took the extra step of further copying these PeopleSoft documents from one of its employees' email accounts to its [REDACTED]—additional reproductions in violation of the Injunction.

***Rimini's Local Copies of PeopleSoft Files Do Not Substantially Comply with the Injunction.*** Under Paragraph 5 of the Injunction, Rimini "shall not reproduce, prepare derivative works from, or use PeopleSoft software or documentation on, with, or to any computer systems other than a specific licensee's own computer systems." Injunction ¶ 5. In its Response, Rimini does not explain why it failed to comply with this prohibition with respect to local copies of PeopleSoft files on its systems. Rimini asserts that "[i]t repeatedly reminds clients of their obligation *not* to send Rimini any third-party copyrighted files." Response at 11 (emphasis in

original). Yet Rimini did not identify a single such reminder or correction that it gave to R.R. Donnelley, [REDACTED]. And Rimini concedes that “[d]espite [its] instructions, clients do occasionally send such material to Rimini.” ECF No. 1382 at 9. Rimini also failed to identify any efforts to quarantine or otherwise sequester the copyrighted PeopleSoft material at issue in these instances, despite claiming to train its employees on the requirements of its Acceptable Use Policy and Rimini’s supposed efforts to monitor compliance. Response at 3, 11; Minne Decl. ¶¶ 8–9, Ex. 10 (Depo Ex. 1835) at RSI007115500 [REDACTED] [REDACTED], Ex. 11 (Mackereth Rule 30(b)(6) Depo.) at 72:6–16 [REDACTED].

Instead of sequestering the files, in the three instances where the Court found violations, Rimini deliberately made *additional* copies of the files or [REDACTED] them to provide support to the customer. The evidence is directly contrary to Rimini’s claim that its “violations were not willful” and there was no “volitional conduct.” Response at 11. Even if Rimini could show that these violations were not willful (and it cannot), this Court has already ruled that “the absence of willfulness does not relieve from civil contempt.” ECF No. 1459 at 22. Volitional conduct is likewise satisfied with proof of proximate causation, which is plainly met here. *Atari Interactive, Inc. v. Redbubble, Inc.*, --- F. Supp. 3d ---, 2021 WL 706790, at \*13–14 (N.D. Cal. 2021) (genuine issues for trial where the defendant “exercises control over every aspect of the sale ... and thus holds the best position to prevent [copyright] infringement”).<sup>4</sup>

Finally, Rimini claims that its migration of Oracle software environments and “efforts to remove hundreds of environments, including millions of files, from its systems and revise its support processes demonstrate its compliance.” Response at 10. But Rimini’s migration ended in

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<sup>4</sup> Rimini’s additional authority is likewise inapposite. The Ninth Circuit distinguished *Tegal Corp. v. Tokyo Electron Co.* 248 F.3d 1376, 1379 (Fed. Cir. 2001), as holding “only that a party enjoined from ‘facilitating’ infringement of a patent cannot be held in contempt merely for failing to prevent another’s infringement, absent an affirmative act of facilitation.” *Institute of Cetacean Research v. Sea Shepherd Conservation Society*, 774 F.3d 935, 952 (9th Cir. 2014). *Wallis v. Greyhound Lines, Inc.*, No. CV 19-3448, 2020 WL 7248368, at \*2 (C.D. Cal. Nov. 9, 2020), dealt with third-party discovery disputes not relevant here.



2014. That migration cannot be used to show compliance with an Injunction that issued in 2018.

***Additional Violations of Paragraph 5 of the Injunction.*** Rimini misleadingly suggests that the PeopleSoft files and documentation on its systems are limited to “11 isolated files sent by clients to Rimini in three incidents.” Response at 10. Oracle’s technical expert identified multiple other examples of PeopleSoft files on Rimini’s systems. Given the page limitation in its OSC Motion, Oracle limited its presentation of these types of Injunction violations to specific examples. Oracle is prepared to present additional examples of violations of Paragraph 5 (developed during discovery) at the hearing if the Court believes that doing so is appropriate.

Rimini argues that presenting evidence about these additional violations of the Injunction at the September 20, 2021, evidentiary hearing “would upend the Court’s show-cause procedure and violate due process.” Response at 5–6 n.4. Rimini is incorrect. Additional examples of PeopleSoft files on Rimini’s systems were disclosed to Rimini over a year ago during post-Injunction expert discovery.<sup>5</sup>

First, Ms. Frederiksen-Cross [REDACTED] BFC Decl. ¶ 13, Ex. 2 (BFC Rpt. ¶ 328 & n.358); Minne Decl. ¶¶ 10–11, Ex. 12 (RSI007291141), Ex. 13 (RSI007291146). Rimini appears not to have told the customer that emailing PeopleSoft code was prohibited. Rimini also [REDACTED] Minne Decl. ¶ 12, Ex. 14 (RSI007291065).<sup>6</sup>

Second, Ms. Frederiksen-Cross identified the following examples of files on Rimini’s Salesforce system that are [REDACTED]

Bates Number	Candidate Filename	Oracle Filename	Percentage Match	Salesforce
RSI007486983	[REDACTED]	[REDACTED]	96%	[REDACTED]
RSI007487681	[REDACTED]	[REDACTED]	97.66%	[REDACTED]
RSI007539876	[REDACTED]	[REDACTED]	98.95%	[REDACTED]

<sup>5</sup> Furthermore, to the extent the Court is not inclined to consider these files as additional Injunction violations in connection with these OSC proceedings, they are nonetheless relevant evidence refuting Rimini’s allegations of substantial compliance and its claim that its Injunction violations are somehow isolated in nature.

<sup>6</sup> Oracle has also located additional PeopleSoft documentation on Rimini’s systems. See, e.g., Minne Decl. ¶¶ 13–14, Ex. 15 (RSI007494527), Ex. 16 (RSI007494523) (customer email).



1	RSI007539877			99.42%	
2	RSI007543542			100%	
3	RSI007543543			99.77%	
4	RSI007543544			100%	
5	RSI007600178			97.14%	
6	RSI007600179			99.94%	

7 BFC Decl. Ex. 2 (BFC Rpt. ¶ 372). Each of these PeopleSoft files on Rimini's systems is a  
 8 further violation of Paragraph 5 of the Injunction.<sup>7</sup>

9 **B. Rimini Should Be Held in Contempt for its Cross-Use of Updates Related to Matheson Trucking**

10 In February 2014, this Court ruled that Rimini infringed Oracle's copyrights by  
 11 developing fixes and updates in one customer's environment that were distributed to other  
 12 customers. ECF No. 474 at 12–13. Rimini continues to engage in the same unlawful cross-use of  
 13 Oracle's PeopleSoft software. The Court found in its Order to Show Cause that Rimini's "update  
 14 HCM200049, delivered to Rimini's client Matheson Trucking, without any indication it was  
 15 developed or tested in that client's environment, is a clear violation of the permanent injunction."  
 16 ECF No. 1459 at 26. Rimini spends nearly three pages challenging the Court's findings on this  
 17 issue—albeit based on arguments the Court has already rejected. Response at 12–14.

18 ***Rimini's Admitted Cross-Use.*** Rimini developed and tested [REDACTED]  
 19 [REDACTED] (Response at 12), thus reproducing and using the associated  
 20 PeopleSoft software, including RAM copies. Rimini's documents confirm [REDACTED]

21 [REDACTED]  
 22 [REDACTED] Rimini Ex. C at '446 (emphasis added). Rimini [REDACTED]  
 23 [REDACTED] Response at 12. This is

24 \_\_\_\_\_  
 25 <sup>7</sup> Rimini also claims that its Acceptable Use Policy "prohibits copying or storing *any client's*  
 26 third-party software or documentation on any Rimini system." Response at 3 (emphasis in  
 27 original). But Ms. Frederiksen-Cross [REDACTED] ECF No. 1335-1-s at ¶ 198 &  
 28 n.203. [REDACTED] proves that Rimini's Acceptable Use Policy is ineffective at preventing Rimini from  
 violating the Injunction and infringing Oracle's copyrights.

1 prototypical cross-use: Rimini used the PeopleSoft environments associated with City of Eugene  
2 to develop and test a fix for other customers, including Matheson Trucking.

3 ***Rimini’s Erroneous Interpretation of the Injunction.*** Rimini repackages arguments that  
4 this Court has rejected into what it now calls a reasonable and good faith interpretation of the  
5 Injunction by characterizing its Injunction violations as merely the “re-use[] [of] knowledge.”  
6 Response at 13. This Court rejected the same argument in its *Rimini II* summary judgment order  
7 because “Rimini has presented no evidence that it took the ‘know-how’ it received by developing  
8 this update in City of Eugene’s environment and used it to develop a separate update for other  
9 clients.” *Rimini II*, ECF No. 1253 at 53. Instead, here, Rimini merely [REDACTED] to the  
10 PeopleSoft environment associated with Matheson Trucking. Whether Rimini’s update [REDACTED]  
11 [REDACTED] is irrelevant. Response at 12. The Injunction  
12 prohibits cross-use “to develop or test software updates or modifications.” Injunction ¶ 6.

13 Rimini violated Paragraph 4 of the Injunction because its use of the PeopleSoft  
14 environments associated with the City of Eugene did not “support the licensee’s own internal data  
15 processing operations.” Injunction ¶ 4. Rimini violated Paragraph 6 of the Injunction because it  
16 used the PeopleSoft environments associated with the City of Eugene “to develop or test software  
17 updates or modifications for the benefit of” Matheson Trucking. *Id.* ¶ 6. Rimini’s belief that “it  
18 was complying” with the Injunction “because its use of City of Eugene’s software to test the  
19 update was to support City of Eugene, which was in scope to receive the update,” ignores these  
20 prohibitions of the Injunction. Response at 13. Rimini is engaging in the same cross-use that this  
21 Court held unlawful in its February 2014 summary judgment order. ECF No. 474 at 13.

22 Rimini also does not offer any evidence that City of Eugene was “in scope to receive” or  
23 somehow benefitted from the update that Rimini was developing for Matheson Trucking.  
24 Response at 13. The Court rejected a similar argument in its *Rimini II* summary judgment order,  
25 when the Court ruled that Rimini cross-used the PeopleSoft environments associated with  
26 Campbell Soup to develop its PPACA update. As the Court explained, “[e]ven though Campbell  
27 Soup and Rimini had a contract for third-party service, that does not mean that Rimini may act  
28 outside the scope of the license agreement and make copies of the PeopleSoft software that are

1 not solely for the licensee’s internal data processing operations.” *Rimini II*, ECF No. 1253 at 45.  
 2 Much like Campbell Soup, which told Rimini that it did not want Rimini’s PPACA update,  
 3 Rimini points to no evidence (or anything else in the discovery record) showing that City of  
 4 Eugene wanted, needed, or was otherwise experiencing problems with the rsi940a.sqr file that  
 5 Rimini was modifying in its associated PeopleSoft environments.

6 ***Rimini’s Adjudicated Cross-Use Does Not Substantially Comply with the Injunction.***

7 Rimini incorrectly asserts that its “Matheson update is nothing like the conduct at issue in *Rimini*  
 8 *I*,” claiming once again that “using *generic* environments to create updates containing Oracle  
 9 code” was the only conduct that the Court has adjudicated as unlawful. Response at 14 (emphasis  
 10 in original). Yet neither of Rimini’s purported distinctions appears in this Court’s February 2014  
 11 summary judgment order. To the contrary, this Court ruled that Rimini’s copying and use of  
 12 Oracle’s PeopleSoft software was unlicensed because “the development environments associated  
 13 with the City of Flint were not used solely for the City of Flint’s internal data processing  
 14 operations. Instead, the development environments were used to develop and test software  
 15 updates for the City of Flint and other Rimini customers ....” ECF No. 474 at 13. Furthermore,  
 16 the Court could find, based upon this and other violations discussed in its prior orders, that Rimini  
 17 in fact treats the PeopleSoft environments ostensibly associated with City of Eugene as generic  
 18 environments, akin to the pre-migration environments associated with the City of Flint.

19 **C. Rimini Posits an Erroneously Narrowed Definition of Cross-Use**

20 For the first time in its Response, Rimini advances a new argument about its cross-use  
 21 violations (including its adjudicated Injunction violation regarding Matheson Trucking). Rimini  
 22 now argues that its cross-use violations should be excused because (for example) even though  
 23 Rimini *developed* particular updates through cross-use, it performed some modicum of *testing* in  
 24 the beneficiary recipients’ PeopleSoft environments.

25 Rimini’s assertion that it [REDACTED] is  
 26 unsupported. Response at 12 (emphasis removed). Rimini submits an email [REDACTED]  
 27 [REDACTED]  
 28 [REDACTED] Rimini Ex. E. This email [REDACTED]

1 [REDACTED] 8

2 Rimini's assertion is also irrelevant because the Injunction does not excuse cross-use  
3 violations based on Rimini's subsequent conduct in the development cycle. Rimini's efforts to  
4 narrow the Injunction ignore that "[t]here are numerous forms of 'cross-use'" and that "[a]ny  
5 work that Rimini performs under color of a license held by a customer for other existing  
6 customers cannot be considered work in support of that particular customer." *Oracle USA, Inc. v.*  
7 *Rimini Street, Inc.*, 879 F.3d 948, 956–57 (9th Cir. 2018). The Injunction does not permit the  
8 escape valve that Rimini posits here, nor do the Court's prior rulings on cross-use: both  
9 development and testing must proceed customer-by-customer.

10 Under Paragraph 4 of the Injunction, Rimini "shall not reproduce, prepare derivative  
11 works from, or use a specific licensee's PeopleSoft software or documentation other than to  
12 support the specific licensee's own internal data processing operations." Injunction ¶ 4. Under  
13 Paragraph 6, Rimini "shall not reproduce, prepare derivative works from, or use PeopleSoft  
14 software or documentation on one licensee's computer systems to support, troubleshoot, or  
15 perform development or testing for any other licensee, including, specifically, that Rimini Street  
16 shall not use a specific licensee's PeopleSoft environment to develop or test software updates or  
17 modifications for the benefit of any other licensee." *Id.* ¶ 6. This Court thus prohibited the  
18 conduct at issue in these contempt proceedings. If Rimini uses or otherwise reproduces  
19 PeopleSoft software associated with one customer to support, troubleshoot, or perform  
20 development and testing for another customer, Rimini has violated the Injunction. If Rimini uses  
21 or otherwise reproduces PeopleSoft software associated with one customer to develop or test  
22

23 <sup>8</sup> Rimini also submits [REDACTED]  
24 [REDACTED] Response at 12; Rimini Ex. D. But [REDACTED] is only a software tool that [REDACTED]  
25 [REDACTED] Minne Decl. ¶ 15,  
26 Ex. 17 (*Rimini II*, Frank Depo.) at 74:7-10 (emphasis added). At most, these [REDACTED] show  
27 automated copying that may (but need not) precede testing. Rimini [REDACTED] *Id.*  
28 at 75:10-15. In contrast, Brenda Davenport, Rimini's Vice President of Quality Assurance,  
[REDACTED] explained that [REDACTED]  
[REDACTED] ECF No. 1385-3-s ¶ 3. Rimini identifies no evidence of this  
testing having been performed before delivery to Matheson Trucking.

1 updates or modifications for the benefit of any other customer, Rimini has violated the Injunction.

2 **IV. RIMINI SHOULD BE HELD IN CONTEMPT FOR THE ADDITIONAL**  
 3 **PEOPLESOFT CONDUCT FOR WHICH THE COURT ORDERED RIMINI TO**  
 4 **SHOW CAUSE**

5 The Court also issued an order to show cause regarding five additional examples in which  
 6 Rimini unlawfully used and reproduced Oracle’s PeopleSoft software. In each, Rimini violated  
 7 the PeopleSoft prohibitions of the Injunction and should be held in contempt for these violations.

8 **A. Rimini Violated the Injunction When It Copied Protected Oracle Expression**  
 9 **into RSPCMPAY.cbl**

10 The Court ordered an evidentiary hearing “to determine if Rimini’s [RSPCMPAY.cbl] file  
 11 contains *protected* Oracle expression that Rimini is prohibited from having on its systems.” ECF  
 12 No. 1459 at 22 (emphasis added). Rimini does not dispute that RSPCMPAY.cbl is a file on  
 13 Rimini’s internal systems that contains Oracle code, and that Rimini distributed it 14 times to 7  
 14 customers. ECF No. 1459 at 21–22; Response at 15; ECF No. 1392 at 8–9.

15 At the evidentiary hearing, Ms. Frederiksen-Cross will testify that Rimini literally copied  
 16 substantial swaths of Oracle code found in file PSPTARRY.cbl into Rimini’s RSPCMPAY.cbl  
 17 file. ECF No. 1368-1-s, at ¶¶ 45 & n.3, 77–78. Ms. Frederiksen-Cross will further explain that in  
 18 addition to copying 32% of the lines of code in the Oracle file PSPTARRY.cbl, Rimini copied  
 19 certain non-functional (*i.e.*, not required for the code to function) elements directly from Oracle  
 20 code (which Rimini omits from its Response), including typographical idiosyncrasies that could  
 21 only be the result of copying. ECF No. 1368-1-s at ¶¶ 77–78 & Ex. 1.

22 In response to this Injunction violation, Rimini incorrectly argues that Ms. Frederiksen-  
 23 Cross’s opinion is insufficient because she did not perform analytic dissection in her analysis. In  
 24 fact, Ms. Frederiksen-Cross did perform analytic dissection, although she did not use the same  
 25 type of analytic dissection favored by Rimini and its expert. This issue was previously before the  
 26 Court on Rimini’s Motion to Exclude Ms. Frederiksen-Cross’s opinions, which the Court denied,  
 27 finding her opinions will “likely help the Court decide the issues of fact in these contempt  
 28 proceedings.” ECF No. 1459 at 12–14. Moreover, experts performing analytic dissection are not  
 required to follow one “formal” methodology. *Computer Assocs. Int’l v. Quest Software, Inc.*,

333 F. Supp. 2d 688, 694 (N.D. Ill. 2004); *In re Countrywide Fin. Corp. Mortgage-Backed Secs. Litig. v. Countrywide Fin. Corp.*, 984 F. Supp. 2d 1021, 1036 (C.D. Cal. 2013). Rimini cites no authority requiring the application of its preferred method of analytic dissection in this Circuit. Response at 15. The only requirement is that “where two works are found to be similar without regard to the scope of the copyright in the plaintiff’s work ... the source of the similarity must be identified and a determination made as to whether this source is covered by plaintiff’s copyright.” *Brown Bag Software v. Symantec Corp.*, 960 F.2d 1465, 1476 (9th Cir. 1992). Ms. Frederiksen-Cross’s analysis readily meets this standard.<sup>9</sup>

Ms. Frederiksen-Cross also will explain [REDACTED]. BFC Decl. ¶ 14, Ex. 3, (*Rimini II* Frederiksen-Cross Surrebuttal Report) at 2–7. Professor Astrachan further elevates form over substance (and ignores common sense), again for Rimini’s benefit. ECF No. 1409 at 13–14. [REDACTED] [REDACTED] ECF No. 1409-4-s (*Rimini II*, Astrachan Depo.) at 252:10–253:12.

Finally, no evidence supports Rimini’s assertion that RSPCMPAY.cbl is the “only” file where Rimini copied a portion of an Oracle file onto its systems. Response at 16. Oracle did not present in its Motion for Order to Show Cause *all* identified examples of files on Rimini’s systems that are substantially similar to Oracle protected expression. In fact, Ms. Frederiksen-Cross identified at least nine other files that [REDACTED]

[REDACTED] BFC Decl. Ex. 2 (BFC Rpt. ¶ 372).

#### **B. Rimini Violated the Injunction When It Cross-Used COEX to Resolve a Support Case for Customer Johnson Controls (JHN)**

The Court ordered an evidentiary hearing on whether a “W-2 update [that] was tested in

<sup>9</sup> *Rentmeester v. Nike, Inc.*, 883 F.3d 1111 (9th Cir. 2018), *overruled on other grounds by Skidmore v. Led Zeppelin*, 952 F.3d 1051 (9th Cir. 2020) (en banc), does not disturb settled Ninth Circuit law that analytic dissection is unnecessary to prove copyright infringement where, as here, the infringer has engaged in direct, literal copying and thus necessarily copied all protected expression within the work. *See* ECF No. 1409 at 13-14 (citing cases).



COEX for Rimini client JHN” constitutes cross-use. ECF No. 1459 at 19–20. This cross-use occurred on January 24, 2019, when Rimini was working to solve a support case with customer Johnson Controls (JHN) and its [REDACTED] ECF No. 1369-20-s. On that date, [REDACTED]  
[REDACTED]  
[REDACTED] ECF No. 1369-20-s. This is a straightforward violation of Paragraph 6 of the Injunction: Rimini used and reproduced the PeopleSoft environment associated with City of Eugene “to support, troubleshoot, and perform development or testing” for Johnson Controls. Injunction ¶ 6. This conduct also violated Paragraph 4 of the Injunction because Rimini’s use and reproduction of PeopleSoft in COEX did not support City of Eugene’s “internal data processing operations.” *Id.* ¶ 4.

In its Response, Rimini offers three distractions. Rimini first argues “the update at issue concerns a change to the font size in an Adobe PDF, *not* any Oracle code.” Response at 17 (emphasis in original). Whether the update resulting from Rimini’s cross-use contains Oracle code is irrelevant; the question is whether Rimini used one customer’s PeopleSoft environment to test the update for another customer. It did. Rimini does not deny using and reproducing PeopleSoft software in COEX to resolve the W-2 print issue experienced by Johnson Controls. Rimini’s use of PeopleSoft software is evident from [REDACTED]  
[REDACTED]  
[REDACTED]. *Compare* Rimini Ex. F with Minne Decl. ¶ 16, Ex. 18 (RSI007075266–267).

Rimini next argues that “the testing performed in COE’s environment was for COE because COE needed this update.” Response at 17. Yet Rimini offers no evidence to support the assertion that COE needed the update. Rimini’s own exhibit states: [REDACTED]

[REDACTED] for additional customers needing the fix. Rimini Ex. F.

Finally, Rimini argues that “the modifications to JHN’s template were implemented specifically for JHN and tested specifically with JHN.” Response at 17. [REDACTED]  
[REDACTED] Minne Decl. ¶ 17, Ex. 19 (RSI007090478) [REDACTED]

1 [REDACTED]). As discussed above, even if Rimini had tested the fix before delivery, that  
2 would not excuse its cross-use of PeopleSoft software in COEX to benefit Johnson Controls.<sup>10</sup>

3 **C. Rimini Violated the Injunction When It Cross-Used COEX to Develop and**  
4 **Test Updates to rsi940a.sqr for Spherion (SPH) and Smead (SME)**

5 Rimini also cross-used the PeopleSoft software associated with City of Eugene to deliver  
6 an updated rsi940a.sqr program to SPH and SME. Rimini admits [REDACTED]  
7 [REDACTED]. Response at 19; Rimini Ex. C  
8 at ‘448. Yet, rather than develop the update in the PeopleSoft environments associated with these  
9 customers, Rimini [REDACTED]  
10 [REDACTED]. After having [REDACTED], Rimini [REDACTED]  
11 [REDACTED] Rimini  
12 Ex. C at ‘442 (emphasis added).

13 As the Court indicated in its Order, “[t]his appears to be a classic example of unlawful  
14 cross-use and Rimini using one client’s environment under color of license for another client.”  
15 ECF No. 1453 at 20. This conduct violates Paragraphs 4 and 6 of the Injunction and parallels  
16 Rimini’s cross-use of PeopleSoft environments associated with City of Eugene to test its PPACA  
17 updates that the Court held infringing in *Rimini II*. *Rimini II*, ECF No. 1253 at 49–55. As the  
18 Court explained in its Order to Show Cause, it “was not expressly licensed” for Rimini to have  
19 “‘prototyped’ [an] update in City of Eugene’s environment, and then sent it to three other clients  
20 without any testing or development in their respective environments.” ECF No. 1459 at 18.  
21 “[T]his conduct also violates the permanent injunction,” and squarely fits the facts at hand. *Id.*

22 Rimini admits it [REDACTED]

23 [REDACTED]. Response at 19. Rimini then [REDACTED]

24 [REDACTED] *Id.* Contrary to its Response, [REDACTED]

25  
26 <sup>10</sup> The Court should disregard Rimini’s lengthy footnote seeking to argue that “[t]he essential step  
27 defense precludes all of the alleged injunction violations here.” Response at 18 n.7. In this  
28 action, Rimini affirmatively waived its defenses under 17 U.S.C. § 117. ECF No. 401 ¶¶ 13–14.  
Rimini’s argument is also contrary to settled Ninth Circuit law. *See Vernor v. Autodesk, Inc.*, 621  
F.3d 1102, 1111–12 (9th Cir. 2010).



1 [REDACTED] SPH and SME. [REDACTED]  
 2 [REDACTED] Minne Decl. ¶ 21, Ex. 23 (RSI007087466). [REDACTED]  
 3 [REDACTED]  
 4 [REDACTED] *Id.* This is further cross-use in violation of the Injunction.<sup>11</sup>  
 5 Rimini attempts to defend this conduct by arguing [REDACTED]  
 6 [REDACTED]  
 7 Response at 19. Rimini’s argument lacks factual support. When Rimini [REDACTED]  
 8 [REDACTED] Rimini  
 9 Ex. C at ‘442.<sup>12</sup> Rimini’s conduct is evidence that City of Eugene-associated environments are  
 10 Rimini’s new “generic environments,” *i.e.*, environments like those Rimini previously hosted on  
 11 its own systems as a development environment for multiple customers. Rimini also does not—  
 12 and cannot—say that its development work was to support *only* the City of Eugene. As this Court  
 13 previously ruled, “[i]f the update was being created and tested in the City of Eugene’s  
 14 environment, for other customers, the court must find that it was not being developed and created  
 15 solely for City of Eugene’s ‘internal data processing operations.’” *Rimini II*, ECF No. 1253 at 53.

16 **D. Rimini Violated the Injunction in Developing and Distributing Its 1099**  
 17 **Derivative Work Update to Easter Seals**

18 The Court’s Order to Show Cause concluded that the 1099 update that Rimini sent to  
 19 Easter Seals on January 3, 2019 (RS18F07) is “one example of a derivative work.” ECF No.  
 20 1459 at 24. Rimini’s attempts to relitigate this issue are without merit.

21 Rimini agrees that its 1099 update included files that print data to complete 1099-INT and  
 22 1099-MISC forms. Response at 20–21. Ms. Frederiksen-Cross confirmed that this 1099 update  
 23

24 <sup>11</sup> Rimini incorrectly cites to [REDACTED], claiming they are [REDACTED]  
 25 [REDACTED] Response at 19. As explained earlier, these documents are only [REDACTED] associated with  
 26 applying an update to an environment.

26 <sup>12</sup> Rimini alleges it “did not send any files from COE’s environment to any other environment,”  
 27 and instead [REDACTED] Response at 20. This is a  
 28 distinction without a difference. After using and reproducing the PeopleSoft software associated  
 with City of Eugene to modify rsi940a.sqr, Rimini [REDACTED] SPH and SME. Rimini Ex. C.  
 Regardless of the specific manner of transmission, this is cross-use.

1 [REDACTED]  
 2 [REDACTED] ECF No. 1368-  
 3 1-s at ¶ 85. Her analysis further confirmed [REDACTED]  
 4 [REDACTED]  
 5 [REDACTED] ECF No. 1368-1-s at ¶ 85.

6 Rimini's 1099 update is a derivative work because it "was designed to interact with  
 7 PeopleSoft," is accessed by customers through "signing into their existing PeopleSoft software,"  
 8 and "[n]othing ... supports a finding that the update could be used with other software programs  
 9 other than PeopleSoft." *Rimini II*, ECF No. 1253 at 52–53; *Micro Star v. Formgen Inc.*, 154 F.  
 10 3d 1107, 1111–12 (9th Cir. 1998). Rimini reprises the same arguments that this Court rejected in  
 11 its *Rimini II* summary judgment order and that Rimini untimely raised in its *Rimini II* Motion for  
 12 Interlocutory Certification. *Rimini II*, ECF No. 1253 at 52–53; *Rimini II*, ECF No. 1298.

13 Because Rimini's 1099 update is a derivative work, and Rimini admits that the underlying  
 14 files [REDACTED] (Response at 21), Rimini is violating Paragraph 5 of the  
 15 Injunction. *See* Injunction ¶ 5 ("Rimini Street shall not reproduce, *prepare derivative works*  
 16 *from*, or use PeopleSoft software or documentation on, with, or to any computer systems other  
 17 than a specific licensee's own computer systems") (emphasis added). Rimini also violated  
 18 Paragraphs 4 and 6 of the Injunction because this update was not created solely for Easter Seals  
 19 using Easter Seals' licensed PeopleSoft Software. Rimini develops and distributes its PeopleSoft  
 20 1099 updates on an annual basis through the cross-use of Oracle's PeopleSoft software. [REDACTED]  
 21 [REDACTED]  
 22 [REDACTED]

23 [REDACTED] Minne Decl. ¶ 18, Ex. 20; ECF 1326-s at ¶ 161 & n.154 (explaining MD5 hash  
 24 values). [REDACTED]  
 25 [REDACTED] Minne  
 26 Decl. ¶¶ 19–20; Exs. 21, 22. [REDACTED]  
 27 [REDACTED]  
 28 [REDACTED] ECF No. 1368-1-s at ¶ 45 & n.3.

1 Rimini also fails to demonstrate that the Easter Seals license agreement permits Rimini to  
 2 create derivative works on behalf of Easter Seals, as this Court required in its Order to Show  
 3 Cause. ECF No. 1459 at 24. Rimini acknowledges [REDACTED]  
 4 [REDACTED]  
 5 [REDACTED] Rimini Ex. M at § 14. But as this  
 6 Court has explained, Rimini as a Designate may not exercise rights granted only to a Licensee.  
 7 ECF No. 474 at 18–19 (finding infringement where Rimini failed to identify an express license to  
 8 a Designate authorizing Rimini’s conduct). Here, the Easter Seals license [REDACTED]  
 9 [REDACTED]  
 10 [REDACTED]  
 11 [REDACTED] Rimini Ex. M at § 1.1. [REDACTED]  
 12 [REDACTED] *Id.* Under the license, [REDACTED]  
 13 [REDACTED]  
 14 *Id.* § 2.1(k). Rimini identifies no such express provision applicable to Designates.

15 Furthermore, Section 4.1 states that [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED] and further provides that  
 18 [REDACTED]  
 19 [REDACTED]  
 20 [REDACTED]  
 21 [REDACTED] Rimini Ex. M at § 4.1 (emphasis added). Even if Rimini could prove a  
 22 right to *create* derivative works for Easter Seals, nothing in the license authorized a third-party  
 23 like Rimini to [REDACTED] its derivative work modifications.

24 **E. Rimini Violated the Injunction in Cross-Using Its “One Code for All”**  
 25 **rsiqtrtx.sqr File to Deliver HCM200105 to Rockefeller Group and Home**  
**Shopping Network**

26 Rimini offers no evidence and identifies nothing in the discovery record to support its  
 27 claim that it developed the HCM200105 update for Rockefeller Group and Home Shopping  
 28 Network without cross-use. Response at 22–23. Rather than provide a detailed description of the

development process, Rimini again offers vague “evidence will show” boilerplate.<sup>13</sup>

Rimini attempts to obfuscate by discussing the HCM200105 fix as a whole. But Rimini

Response at 22.<sup>14</sup> This is a violation of the Injunction because Rimini created rsqtrtx.sqr in one customer’s environment and then sent the file to other customers.

The [REDACTED] is another example of Rimini working to create a single file with uniform code that it can cross-use between large groups of its customers. Rimini [REDACTED]

[REDACTED] Minne Decl. ¶ 22, Ex. 24 (RSI007329092). As Ms. Frederiksen-Cross explains, [REDACTED]

[REDACTED] ECF No. 1326-s at ¶¶ 267–69. Rimini’s development and testing of [REDACTED] using one customer’s environment and distribution of that file to other customers is cross-use in violation of the Injunction. Injunction ¶¶ 4–6.

## V. RIMINI SHOULD BE HELD IN CONTEMPT FOR VIOLATING THE INJUNCTION’S JD EDWARDS PROHIBITIONS

### A. Rimini Copies “J.D. Edwards Software Source Code”

Paragraph 8 of the Injunction prohibits Rimini from “copy[ing] J.D. Edwards software source code to carry out development and testing of software updates.” Injunction ¶ 8. The

<sup>13</sup> Oracle objects to Rimini Exhibit N, [REDACTED] that was not produced in discovery and reflects a last edited date of April 1, 2021, well after Oracle no longer had access to Rimini’s Jira system. Oracle is therefore unable to determine whether the screenshot reflects contemporaneous development records.

<sup>14</sup> Rimini’s claim [REDACTED] is irrelevant to whether the Injunction was violated; Dev Instruction or no, Rimini admits that it took the SQR file (one component of the update) that it developed in one customer’s environment and sent it to other customers.

1 Court ordered an evidentiary hearing to address the parties’ “dispute over the definition of source  
 2 code.” ECF No. 1459 at 25. “Source code” is “code in a human-readable format.” ECF No.  
 3 1368-1-s at ¶ 88. Oracle’s JD Edwards software platform has a variety of source code files,  
 4 including “.h” and “.c” files (written in the C programming language), Business Functions,  
 5 Interactive Applications, Batch Applications, and Event Rules code. *Id.* ¶ 89.

6 Neither Rimini nor Professor Astrachan disputes that source code generally refers to code  
 7 in a human-readable format. ECF No. 1368-s at 24 n.13. Rimini instead manufactures a new  
 8 distinction between what it calls JD Edwards “open code” (apparently meaning all source code  
 9 written by Oracle and made available to Oracle’s JD Edwards licensees) and JD Edwards “closed  
 10 code” (apparently meaning all source code written by Oracle not made available to Oracle’s JD  
 11 Edwards licensees), conveniently arguing that the Injunction only prohibits copying of the latter.  
 12 Rimini’s definition is pure sophistry, as Rimini is arguing that it is free to use all the code it can  
 13 access, and that the Injunction only prevents Rimini from using code it could never access.  
 14 Under Rimini’s contrived definition of “source code,” Paragraph 8 of the Injunction does nothing,  
 15 as it prohibits Rimini from doing things Rimini could never do. Rimini’s own expert, Professor  
 16 Astrachan, refused to endorse Rimini’s sleight-of-hand. Minne Decl. ¶ 23, Ex. 25 (Astrachan  
 17 Depo.) at 252:13–253:3 (taking no position on “J.D. Edwards software source code”).

18 The Injunction prohibits copying of software source code, regardless of whether Rimini  
 19 describes it as “open” or “closed.” [REDACTED]  
 20 [REDACTED]. ECF No. 1369-6-s at 135:5–20. Rimini also offers the irrelevant  
 21 and extrinsic opinions of Mr. Lanchak, apparently in an attempt to change the meaning of the  
 22 Injunction after the fact. But Mr. Lanchak [REDACTED]  
 23 [REDACTED]  
 24 [REDACTED] ECF No. 1405-1-s at 173:8–174:11. Rimini cites no authority that would allow parol  
 25 opinions from a third party who did not testify at trial and played no part in permanent injunction  
 26 briefing to somehow inform the meaning of an Injunction that this Court already issued.

27 Rimini’s litigation position is further contradicted by its own documents, [REDACTED]  
 28 [REDACTED] [REDACTED]

1 [REDACTED]  
2 [REDACTED]  
3 Minne Decl. ¶ 24, Ex. 26 (RSI2\_014273468) (emphasis added). [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 Minne Decl. ¶ 25, Ex. 27 (RSI2\_013418086) (emphasis added). [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED] Minne Decl. ¶¶ 26–27, Ex. 28 (RSI2\_015588159) (emphasis  
10 added); Ex. 29 (RSI2\_013094139) [REDACTED]  
11 [REDACTED] (emphasis in original).  
12 [REDACTED]  
13 [REDACTED] ECF No.  
14 1369-6-s at 132:8–134:21; ECF No. 1369-7-s. These admissions show that what Rimini calls  
15 “open code” is in fact “J.D. Edwards software source code” under the Injunction.

16 To distract from these facts, Rimini asserts that enforcing Paragraph 8 “would function as  
17 a total ban on Rimini providing JDE support.” Response at 25. But its own documents tell a  
18 different story. In October 2016, after the first permanent injunction went into effect, Rimini’s  
19 President Sebastian Grady [REDACTED]

20 [REDACTED] Minne Decl. ¶ 28, Ex. 30 (RSI2\_025104432). A  
21 few months later in an investor presentation, Rimini [REDACTED]  
22 [REDACTED]  
23 [REDACTED] Minne Decl. ¶ 29, Ex.  
24 31 (RSI2\_030635285). According to Rimini, [REDACTED]  
25 [REDACTED]  
26 [REDACTED] *Id.* Rimini’s words to its own  
27 employees and to its investors show that the Injunction can be enforced without halting Rimini’s  
28 entire JD Edwards support business.

Rimini next contends that enforcing the plain and ordinary meaning of Paragraph 8 of the Injunction would render Paragraph 10 “superfluous.” This is incorrect. Though there is overlap between Paragraphs 8 and 10 (just as there is overlap between the Injunction’s PeopleSoft prohibitions), the two paragraphs are not co-extensive. Paragraph 10, for example, prohibits copying and use of JD Edwards documentation and software (such as user interface screens) on one licensee’s computer systems to support another licensee. Paragraph 8 prohibits copying of source code even for the sole benefit of the associated licensee. Oracle’s reading gives meaning to both paragraphs and seeks to give “source code” its commonly understood meaning as code in a human-readable format. Rimini, by contrast, wants to render Paragraph 8 superfluous. In Rimini’s retelling, “source code” in Paragraph 8 refers only to “closed code” that Rimini concededly does not copy when developing and testing updates—in other words, Paragraph 8 could never be violated without reverse engineering or similar extreme measures.

Finally, Rimini collaterally attacks the Injunction by complaining that the “meaning of ‘J.D. Edwards software source code’ and whether Rimini copies that code was not adjudicated,” and [REDACTED]. Response at 26. But “[t]he collateral attack on an injunction during contempt proceedings is prohibited if earlier review of the injunction was available.” *W. Water Mgmt., Inc. v. Brown*, 40 F.3d 105, 108 (5th Cir. 1994). Rimini’s arguments also fail on the merits. At summary judgment, the Court ruled that JD Edwards licenses “do[] not permit Rimini to access the software’s source code to carry out development and testing of software updates.” ECF No. 474 at 22. The jury was similarly instructed that the “J.D. Edwards software license agreements” do not authorize Rimini “to make copies of the J.D. Edwards software application and documentation to, among other things, access the software’s source code to carry out development and testing of software updates ....” ECF No. 880 at 27–28. The jury found Rimini liable for infringement of Oracle’s JD Edwards copyrights (ECF No. 896 at 2), and the Ninth Circuit affirmed the copyright infringement verdict.

#### **B. Rimini Copied “J.D. Edwards Software Source Code” into Its Technical Specifications**

The Court ordered an evidentiary hearing to determine if Rimini’s technical specification



1 for its JDE105328 update “did in fact copy Oracle source code in violation of the permanent  
2 injunction.” ECF No. 1459 at 25. Rimini copied two JD Edwards source code files into this  
3 specification: P06767 from JD Edwards World A9.3 and R89078652 from EnterpriseOne.

4 Rimini does not address its copying of P06767 into this technical specification. *See* ECF  
5 No. 1368-s-1 at ¶ 101. Rimini’s documents [REDACTED]  
6 Minne Decl. ¶ 30, Ex. 32 (RSI2\_031739263). As for R89078652, Rimini [REDACTED]

7 [REDACTED] Response at 27 (emphasis in original). [REDACTED]  
8 [REDACTED] ECF No. 1368-s-1 at ¶¶ 97–99;  
9 ECF No. 1369-s-5. [REDACTED]

10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED] ECF No. 1386-s-2 at ¶ 22. Typing is one of many methods of copying.  
13 *Micro-Sparc, Inc. v. Amtype Corp.*, 592 F. Supp. 33, 36 (D. Mass. 1984) (copyright infringement  
14 against “typing service” that typed a magazine’s computer programs into a computer).<sup>15</sup>

## 15 **VI. RIMINI HAS NOT SUBSTANTIALLY COMPLIED WITH THE INJUNCTION**

16 Rimini has failed to substantially comply with the Injunction for several reasons. *First*,  
17 Rimini has already violated the Injunction on three separate occasions by maintaining PeopleSoft  
18 software and documentation on its computer systems and by cross-using PeopleSoft software.  
19 Eight additional Injunction violations are to be adjudicated at the September 20, 2021, evidentiary  
20 hearing. The limited discovery that Oracle received during these post-Injunction proceedings  
21 establishes that Rimini acted in contempt of the Court’s Injunction. Complete discovery into  
22 Rimini’s support processes would show the full extent of its Injunction violations.

23  
24 <sup>15</sup> Rimini also provides no evidence to support its assertion that “prvtsidx.plb” is not a JD  
25 Edwards file. Putting aside this lack of proof, this file at the very least is an Oracle Database file  
26 and its existence on Rimini’s systems is a violation of Paragraph 15 of the Injunction. Injunction  
27 ¶ 15 (“Rimini Street shall not reproduce, prepare derivative works from, or distribute Oracle  
28 Database software.”). The Court’s Oracle Database summary judgment order ruled that neither  
the Oracle Developer License nor the Oracle License and Service Agreement permitted Rimini to  
maintain copies of Oracle Database files on its systems for commercial purposes. ECF No. 476 at  
7–15. The Court’s reasoning, applied here, establishes another violation of the Injunction.



1           *Second*, Rimini's Injunction violations are substantive. The violations already found by  
 2 the Court go to the core of what the Injunction forbids: cross-use and local copies of PeopleSoft  
 3 software and documentation. The violations to be adjudicated at the evidentiary hearing are  
 4 directed to the same PeopleSoft prohibitions as well as the prohibition that Rimini cannot copy JD  
 5 Edwards source code. *Henry Schein, Inc. v. Certified Bus. Supply, Inc.*, No. SA CV 03-1662,  
 6 2008 WL 9452685, at \*8 (C.D. Cal. Aug. 20, 2008) (finding contempt because an injunction  
 7 "does not permit sporadic violations, where those violations go to the heart of the [i]njunction").

8           *Third*, Rimini fails to show that it "took all reasonable steps to comply with the  
 9 [Injunction]." *Kelly v. Wengler*, 822 F.3d 1085, 1096 (9th Cir. 2016). In its Response, Rimini  
 10 does not argue that it was unable to comply with the Court's Injunction. Rimini could have  
 11 complied with the Injunction, but instead chose not to do so. In fact, [REDACTED]  
 12 [REDACTED] Rimini also downplayed its  
 13 alleged compliance efforts by repeatedly telling the public that the Injunction does not affect its  
 14 current support processes because Rimini stopped doing what the Injunction forbids years before  
 15 the Injunction issued. Rimini's strained, implausible interpretations of the Injunction are  
 16 evidence of its efforts to evade the Injunction, not evidence of efforts to comply with it.

17           *Finally*, Rimini asserts that "[i]f errors were made with respect to a handful of updates, out  
 18 of [REDACTED], that certainly does not show contempt for the Court's order." Response at 23. But  
 19 Rimini does not offer proof that [REDACTED] updates is an accurate number, much less that any one of  
 20 these purported [REDACTED] updates complies with the Injunction. The Court should not make the  
 21 "illogical" comparison between Injunction violations and Rimini's unsupported attorney  
 22 argument. *Black Lives Matter Seattle-King County v. City of Seattle, Seattle Police Dep't*, --- F.  
 23 Supp. 3d. ----, 2021 WL 289334, at \*4 (W.D. Wash. Jan. 28, 2021) (finding city and police  
 24 department in contempt based on four deployments of force that violated an injunction and  
 25 refusing to weigh those violations "against all 122 deployments" not in evidence). Oracle  
 26 certainly did not receive full custodial discovery into Rimini's [REDACTED] updates; instead, Rimini  
 27 fought to limit Oracle to discovery from just 10 custodians and only one corporate deposition.  
 28 Rimini also would not catalogue its updates and fixes during post-Injunction discovery, including

the names of the underlying files, and the persons involved in developing and testing them—  
 claiming instead that [REDACTED]  
 [REDACTED]. Rimini also fought to limit Oracle to issuing just five third-party subpoenas (when  
 over 700 issued in *Rimini II*). Having successfully argued for limited discovery, Rimini should be  
 judicially estopped from arguing that its overall practices now show substantial compliance.  
*Helfand v. Gerson*, 105 F.3d 530, 535 (9th Cir. 1997) (“[J]udicial estoppel applies to a party’s  
 stated position, regardless of whether it is an expression of intention, a statement of fact, or a  
 legal assertion”); *Lee v. United States*, Case No. 2:14-cv-00606, 2016 WL 3360653, at \*5 (D.  
 Nev. June 9, 2016) (a party “may not resist discovery and later use documents or evidence it has  
 not timely produced in motion practice or at trial”). The discovery record does not show how  
 Rimini developed, tested, or otherwise distributed its [REDACTED] updates—much less that they  
 comply with the Court’s Injunction.

## **VII. IMPOUNDMENT/ESCROW, COMPENSATORY DAMAGES, AND ATTORNEYS’ FEES ARE APPROPRIATE REMEDIES**

Rimini claims that, even if the Court were to find Rimini in contempt, “well-settled law  
 forecloses all of the sanctions sought by Oracle.” Response at 28. The Court already rejected this  
 argument. ECF No. 1459 at 29–30.

**Impoundment.** The Court noted in its Order to Show Cause that “impoundment is a  
 statutory remedy permitted under the Copyright Act for copyright infringement” and that in “a  
 civil contempt proceeding, the Court may find impoundment appropriate if Rimini willfully  
 violated the Court’s orders.” ECF No. 1459 at 29.

When the Court issued the original injunction in 2016, it declined to order impoundment,  
 reasoning that “Oracle’s disposition remedy - preclusion of Rimini from using the infringing  
 works - is achieved the same with a permanent injunction as it would be with a disposition order.”  
 ECF No. 1049 at 10. Unfortunately, the record demonstrates that the Injunction alone was  
 insufficient to discourage Rimini’s continued infringement. Rimini has continued to create and  
 distribute updates in violation of the Injunction, and it has taken almost three years to bring the  
 issue of Rimini’s violations before the Court for a hearing. Rimini also openly flouts the

1 Injunction and this Court’s authority when it makes public statements about how the Order to  
 2 Show Cause was some sort of Rimini victory. Impoundment, or some version of escrow that  
 3 allows monitoring and discovery of infringing conduct, is necessary to prevent and/or detect  
 4 Rimini’s continued Injunction violations and avoid years of discovery and Court involvement to  
 5 detect further infringement of Oracle’s copyrights. The Court stated: “If the Court finds Rimini  
 6 in contempt, the Court will determine at that time how to fashion equitable and appropriate  
 7 sanctions and reopen discovery if it sees fit to do so.” ECF No. 1459 at 30. During the  
 8 evidentiary hearing, Oracle will discuss the logistical details of the various impoundment and  
 9 escrow options that would best enforce the Injunction while imposing the least burden possible on  
 10 Rimini’s continued operation.

11 ***Compensatory Damages.*** The Court already has ruled that “compensatory damages may  
 12 be awarded for Oracle’s actual damages and any additional profits of the infringer.” ECF No.  
 13 1459 at 30. Contrary to Rimini’s assertion that “Oracle conceded it has no evidence of actual,  
 14 compensatory damages,” Oracle’s Motion for Order to Show Cause noted that damages discovery  
 15 had not yet been permitted and requested that the Court reopen discovery to determine damages.  
 16 ECF No. 1368-s at 30. In its Order to Show Cause, the Court noted that “damages will be  
 17 assessed by the jury in *Rimini II*” for some of Rimini’s conduct at issue here (ECF No. 1459 at  
 18 17–18) and further noted that the Court would consider reopening discovery into compensatory  
 19 damages upon a finding of contempt. *Id.* at 30. Should the Court find contempt, Oracle will seek  
 20 leave to take discovery into and brief the issue of any compensatory damages that resulted from  
 21 Rimini’s conduct in violation of the Injunction and are non-duplicative of any *Rimini II* damages.

22 ***Attorneys’ Fees.*** The Court ruled that “it is well established that the prevailing party may  
 23 be awarded attorneys’ fees and costs in civil contempt proceedings and the Court has discretion to  
 24 determine if a fee award is an appropriate remedial measure.” ECF No. 1459 at 30. The fees and  
 25 costs Oracle incurred in exposing Rimini’s conduct (which is described in detail above and will  
 26 be further described at the hearing) and enforcing the Injunction satisfy the Court’s criteria for  
 27 awarding attorneys’ fees under the Copyright Act. ECF No. 1164 at 10–15. Following the  
 28 Court’s ruling, Oracle will request the opportunity to brief this issue.

1  
2 DATED: June 9, 2021

MORGAN, LEWIS & BOCKIUS LLP

3  
4 By: /s/ Benjamin P. Smith  
Benjamin P. Smith

5 Attorneys for Plaintiffs Oracle USA, Inc., Oracle  
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**CERTIFICATE OF SERVICE**

I hereby certify that on June 9, 2021, I electronically transmitted the foregoing  
**ORACLE'S RESPONSE TO RIMINI'S RESPONSE TO ORDER TO SHOW CAUSE** to  
the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic  
Filing to all counsel in this matter; all counsel being registered to receive Electronic Filing.

MORGAN, LEWIS & BOCKIUS LLP

DATED: June 9, 2021

By: /s/ Benjamin P. Smith  
Benjamin P. Smith

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